

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Implementation of Cable Act Reform )  
Provisions of the Telecommunications )  
Act of 1996 )

CS Docket No. 96-85

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**COMMENTS OF GTE**

GTE Service Corporation (GTE), on behalf of its affiliated domestic telephone and video companies, hereby submits these Comments in response to the Notice of Proposed Rulemaking, FCC 96-154, released April 9, 1996, (*Notice*) in the above-captioned proceeding. In the *Notice*, the Commission seeks comment on proposed rules designed to implement various provisions of the Telecommunications Act of 1996<sup>1</sup> affecting the operation and provision of cable television services.

**I. EFFECTIVE COMPETITION.**

The 1996 Act modified the effective competition test applicable to cable systems subject to rate regulation. Pursuant to Section 301(a)(3) of the Act,<sup>2</sup> effective competition now exists if a local exchange carrier (LEC) or its affiliate (or any multichannel video programming distributor (MVPD) using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

<sup>2</sup> 110 Stat. at 115, *amending* 47 U.S.C. § 543(l)(1).

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cable operator which is providing cable service in that franchise area. This test applies only if the video programming services so offered in that area are "comparable to the video programming services provided by the unaffiliated cable operator in that area." 110 Stat. at 115; *Notice*, at ¶ 7.

The *Notice* seeks comment as to whether Congress intended effective competition to be found if service was offered in *any* portion of the franchise area, or whether the competitor's service must be offered within some larger portion of the franchise area. The Commission also requests comment on what level of competition is sufficient to have a restraining effect on cable rates and whether the incumbent cable operator's response to competition depends not just on the current pass rate but upon the potential pass rate. *Notice*, at ¶ 72.

GTE believes that the new effective competition provision of the statute is straightforward -- the effective competition test would be met if a LEC offered video distribution services in any portion of the incumbent cable operator's franchise area. GTE does not believe that Congress intended for the Commission to establish additional measures of service penetration or percentage of homes passed. Therefore, in GTE's view, the Commission should simply codify the statute and not attempt to impose more regulation than Congress intended.

In like fashion, GTE also believes that the Commission must take the same approach with respect to the adoption of rules affecting LEC provision of video services. Although LECs may provide video programming via a traditional closed cable systems subject to Title VI provisions and local franchise authority, they now have the option of

providing services to multiple programmers over open video systems (OVS).<sup>3</sup> In order for such open video systems to be successful, and consumers to benefit from competition among LECs and cable operators for programming services, the Commission must refrain from establishing all but the most necessary regulation. Thus, for example, where rate regulation is lifted from the incumbent cable operator pursuant to the new effective competition test, an OVS operator and programmers in the same market must be equally free from price setting constraints. See Comments of Joint Parties in CS Docket 96-46, April 1, 1996.

The deregulatory nature of the 1996 Act and this consistency principle also dictate that the expansion of the effective competition test for cable companies should trigger comparable Commission action to permit expanded pricing flexibility in local telephone markets. Indeed, the National Cable Television Association (NCTA) itself has previously shown that competitors with small or even zero market share can affect the pricing behavior of the incumbent firm. In NCTA's view, in which GTE joins, the incumbent provider should be deregulated as soon as a competitor is authorized to provide service, even if no competitive service has actually been offered.<sup>4</sup>

In the telephony market, competition for many LEC services has existed for years and is rapidly increasing, even while the 1996 Act has fully opened the local exchange market to new competitors. Because the pricing behavior of LECs is now

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<sup>3</sup> See 1996 Act, § 302(a), *adding* 47 U.S.C. § 571(a).

<sup>4</sup> See NCTA Comments in the Matter of Waiver of the Commission's Rules Regulating Rates for Cable Services, CUID Nos. NJ2013 and NJ01160, December 13, 1995, at 13, and Attachment by Economists Incorporated, at 1-5.

constrained, the Commission should adopt many of the baseline pricing flexibility proposals set forth in the CC Docket 94-1 Price Cap proceeding and establish a framework which allows placement of certain LEC services subject to competition under streamlined or non-dominant regulation. This should be done in tandem with establishing effective competition rules for cable companies in this docket, thus advancing the deregulatory and pro-competitive objectives of the 1996 Act.

## **II. DEFINITION OF AN AFFILIATE.**

For purposes of the new effective competition test, the Commission requests comment on the proper definition of an "affiliate," noting that while Congress added a new definition in Title I of the Act it did not modify the meaning of the term under Title VI. *Notice*, at ¶ 16.

GTE believes that the established Title VI definition of an "affiliate" continues to govern the implementation of all Title VI provisions, including the effective competition test and provisions related to OVS and cable-telco buy-outs. See *Notice*, at ¶ 95. Had Congress intended otherwise, *i.e.*, had Congress intended to specially apply the Title I provision in these contexts, Congress could and would have explicitly restricted the Commission from employing the Title VI definition. Rather, Congress enacted these provisions fully cognizant of the established Title VI definition and made no such special exception in these contexts.

Even if Congress had not relied upon the Title VI definition, the alternative formulation in Title I adopts an arbitrary ownership threshold of 10 percent to determine affiliation. This arbitrary threshold does not comport to the emerging telecommunications marketplace and would likely prove to be too inflexible applied to

an industry in which business alliances and partnerships are becoming increasingly commonplace. GTE therefore believes that the Commission should instead focus on the "control" standard of the Title VI definition when determining the degree of affiliation for purposes of invoking the effective competition and buy-out provisions of Title VI.

### **III. UNIFORM RATE REQUIREMENT.**

Section 301(b)(2) of the 1996 Act allows cable operators to offer bulk discounts to multiple dwelling unit (MDU) customers as an exception to the uniform rate requirement. *Notice*, at ¶ 97. The Commission tentatively concludes that this bulk discount exception does not allow operators to offer discounts on an individual basis to subscribers but rather that a single discounted rate, negotiated by the owner or manager be negotiated on behalf of all tenants. The *Notice* also asks whether the discount should be applied to individual tenant billings or only in cases in which a bulk payment is made to the cable operator by the MDU owner. *Id.*, at ¶ 98. The *Notice* also suggests that the definition of a multiple unit dwelling may and should be modified in implementing the uniform rate provision exception. *Id.*, at ¶ 99.

GTE generally agrees that Congress intended for cable operators to be allowed to apply discounts to bulk service provided to MDUs and that such discounts should not vary among tenants within an individual MDU. The application of the discount with respect to billing should depend on the individual business arrangement for that MDU -- e.g., if the cable operator bills subscribers directly, then the discounts should apply to the subscriber's bill. Otherwise, the discount should apply to the bulk billing provided to the MDU owner.

The Commission should refrain from modifying the definition of an MDU for purposes of implementing the uniform rate requirement exception as the *Notice* suggests. While the 1996 Act does expand the private cable exemption to the cable system definition to include dwellings such as mobile homes and military installations, Congress granted no such authority for the Commission to expand the established definition of an MDU. To the contrary, Congress left the existing definition intact while it explicitly amended the definition of a cable system because it desired to effect a change.<sup>5</sup> Moreover, to arbitrarily alter the existing MDU definition would impact other regulations affecting MDUs, such as the cable inside wiring rules. Therefore, GTE believes that the Commission should simply apply the effective competition rules consistent with existing policy.<sup>6</sup>

#### **IV. ADVANCED TELECOMMUNICATIONS INCENTIVES.**

The *Notice* seeks comment on how the Commission could best advance Congress' goal to provide incentives to deploy advanced telecommunications capability to all Americans within the context of cable services regulation. *Notice*, at ¶ 109. GTE believes that the most effective means to achieve this goal is for the Commission to allow competitive markets to work with little or no regulatory interference. Cable companies are already deploying advanced video programming and distribution capabilities to schools, governmental, and other community facilities as part of their

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<sup>5</sup> Section 301(a)(2), 110 Stat. at 114, *amending* 47 U.S.C. § 522(7).

<sup>6</sup> If the development and success of private cable systems, such as SMATV, reach subscribership levels sufficient to trigger the effective competition test, the cable operator would be free to offer service discounts to such locations.

local franchise obligations. In order to extend video distribution services to a greater number of subscribers, the Commission's rules should encourage, rather than inhibit, new forms of video programming distribution, such as OVS.

**V. CONCLUSION.**

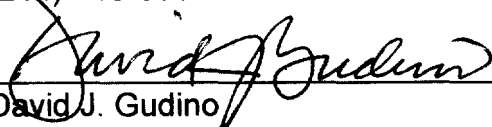
For the reasons stated above, GTE believes that the Commission should advance the goals of the 1996 Act by consistently applying a policy of deregulation to the converging cable and telephony markets in light of the emergence of competition. The Commission should also follow Congress' reliance on the definition of an "affiliate" set for in Title VI and should not attempt to modify the definition of a "multiple dwelling unit" when Congress left this definition intact. Finally, the best means to provide incentives for the private sector to deploy advanced telecommunications capability is to allow competitive markets to work with little or no regulatory interference.

Respectfully submitted,

GTE Service Corporation, on behalf of its  
affiliated domestic telephone and video  
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June 4, 1996

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